

1/23/87

JAN 23 1987

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
STATE OF WASHINGTON  
(Department of Transportation)  
Defendant.

**C87-126**

CIVIL ACTION NO.

COMPLAINT

The United States of America ("Plaintiff"), by and  
through its undersigned attorneys, by the authority of the Attorney  
General of the United States, and at the request of the Administrator  
of the United States Environmental Protection Agency ("EPA"),  
alleges that:

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2. Plaintiff seeks to enjoin defendant from further violating the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos promulgated by EPA under Section 112 of the Clean Air Act, 42 U.S.C. § 7412, 40 C.F.R. Part 61. Plaintiff also seeks the assessment of civil penalties for defendant's violations of these regulations and its costs and fees in this action.

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4. Notice of the commencement of this action has been given to the State of Washington as required by 42 U.S.C. § 7413(b).

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1           6. Defendant State of Washington is a sovereign state.  
2 Defendant owns and operates a facility known as the Puyallup River  
3 Bridge, located at East 11th Street and Milwaukee Way, Tacoma,  
4 Washington. The Puyallup River Bridge is the location of the reno-  
5 vation that is the subject of this litigation. Defendant, State of  
6 Washington, is a "person" as defined by 42 U.S.C. § 7602(e), within  
7 the meaning of 42 U.S.C. § 7413(b).

8                           THE ASBESTOS NESHAP

9           7. Section 112 of the Clean Air Act, 42 U.S.C. § 7412,  
10 authorizes the Administrator of EPA to publish a list of air  
11 pollutants determined to be hazardous and to prescribe emission  
12 standards for those pollutants. These standards are known as  
13 National Emission Standards for Hazardous Air Pollutants  
14 ("NESHAP").

15           8. EPA listed asbestos as a hazardous air pollutant  
16 under the authority of Section 112 of the Act, 42 U.S.C.  
17 § 7412(b), and also adopted an asbestos NESHAP that is codified  
18 at 40 C.F.R. Part 61, subpart M.

19           9. Section 112(c) of the Clean Air Act, 42 U.S.C.  
20 § 7412(c), prohibits the emission of any air pollutant to which  
21 a NESHAP applies, from any stationary source, in violation of  
22 such NESHAP. Noncompliance with a NESHAP is a violation of  
23 Section 112(c) of the Act.

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1           10. 40 C.F.R. § 61.02 defines "owner or operator" as  
2 "any person who owns, leases, operates, controls or supervises  
3 a stationary source."

4           11. 40 C.F.R. § 61.02 defines "stationary source" as  
5 "any building, structure, facility, or installation which emits  
6 or may emit any air pollutant which has been designated as  
7 hazardous by the Administrator."

8           12. 40 C.F.R. § 61.141 defines "friable asbestos  
9 material" as "any material that contains more than 1 percent  
10 asbestos by weight and that hand pressure can crumble, pulverize,  
11 or reduce to powder when dry."

12           13. 40 C.F.R. § 61.141 defines "demolition" as "the  
13 wrecking or taking out of any load-supporting structural member  
14 of a facility together with any related handling operations."  
15 The same section also defines "renovation" as "altering in any  
16 way one or more facility components . . . ."

17           14. 40 C.F.R. § 61.141 defines "particulate asbestos  
18 material" as "finely divided particles of asbestos material."  
19 That same section also defines "asbestos material" as "asbestos  
20 or any material containing asbestos."

21           15. 40 C.F.R. § 61.145 states that 40 C.F.R.  
22 §§ 61.146 and 61.147 apply, with exceptions not relevant to  
23 this action, to each owner or operator of a demolition or

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1 renovation operation if the amount of friable asbestos material  
2 in a facility being demolished or renovated is at least 80  
3 linear meters (260 linear feet) on pipes or at least 15  
4 square meters (160 square feet) on other facility components.

5 16. 40 C.F.R. § 61.146 requires each owner or operator  
6 of a demolition or renovation operation where there is the  
7 regulated amount of asbestos to provide the Administrator of  
8 EPA with written notification of intention to demolish or renovate,  
9 setting forth specified information, prior to the commencement  
10 operations.

11 17. 40 C.F.R. § 61.147, in relevant part, requires each  
12 owner or operator to comply with certain work practices to prevent  
13 emission of particulate asbestos material to the outside air.

14 18. 40 C.F.R. § 61.152(b) requires each owner or operator  
15 to "discharge no visible emissions to the outside air during the  
16 collection, processing (including incineration), packaging, trans-  
17 porting or deposition of any asbestos-containing waste material  
18 generated by the source . . . ."

19 THE NESHAPs VIOLATIONS

20 19. On or about June 25, 1986, defendant engaged  
21 in demolition activities or renovation activities or both  
22 within the definition of the NESHAP regulations, 40 C.F.R. § 61.141,

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1 at the Puyallup River Bridge located at East 11th Street and  
2 Milwaukee Way, Tacoma, Washington. Said activities involved the  
3 removal or stripping or both of friable asbestos material as  
4 defined in 40 C.F.R. § 61.141.

5 20. The demolition or renovation operations at the  
6 Puyallup River Bridge involved the removal or stripping of quan-  
7 tities of friable asbestos material in excess of 260 linear feet  
8 at the facility and, therefore, the operation came under the  
9 NESHAP regulations, 40 C.F.R. § 61.145.

10 21. The State of Washington is liable because it owns  
11 the facility in question and because, through its agency the  
12 Department of Transportation, it operated the demolition or  
13 renovation operation in question.

14 FIRST CLAIM FOR RELIEF

15 22. Paragraphs 1 through 21 are incorporated  
16 herein by reference as if fully alleged below.

17 23. Defendant failed to provide prior written notice  
18 of intention to renovate or demolish in violation of 40 C.F.R.  
19 § 61.146 and Sections 112(c) and 114(a)(1)(B) of the Clean Air  
20 Act, 42 U.S.C. § 7412(c) and § 7414(a)(1)(B).

21 SECOND CLAIM FOR RELIEF

22 24. Paragraphs 1 through 21 are incorporated herein by  
23 reference as if fully alleged below.

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1           25. On or about June 25, 1986, defendant removed  
2 friable asbestos materials from the Puyallup Bridge facility  
3 by removing pipes from underneath the bridge.

4           26. This removal was performed in violation of the  
5 work practices set forth at 40 C.F.R. § 61.147, because defendant  
6 failed to keep the friable asbestos materials adequately wetted.  
7 Defendant's actions constitute a violation of 40 C.F.R. § 61.147  
8 and Section 112(c) and (e) of the Clean Air Act, 42 U.S.C. § 7412(c)  
9 and (e).

10                   THIRD CLAIM FOR RELIEF

11           27. Paragraphs 1 through 21 are incorporated herein by  
12 reference as if fully alleged below.

13           28. Defendant did not ensure that the friable asbestos  
14 material involved in the removal of the pipes at the Puyallup  
15 River Bridge remained wet until collected for disposal in violation  
16 of 40 C.F.R. § 61.147(e) and Section 112(c) and (e) of the Clean  
17 Air Act, 42 U.S.C. § 7412(c) and (e).

18                   FOURTH CLAIM FOR RELIEF

19           29. Paragraphs 1 through 21 are incorporated herein by  
20 reference as if fully alleged below.

21           30. On information and belief, defendant discharged  
22 visible emissions to the outside air during the collection,  
23 processing packaging, transporting, or deposition of asbestos-  
24 containing waste material generated at the Puyallup Bridge facility.

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1 The defendant failed to use one of the disposal methods specified  
2 in 40 C.F.R. § 152(b) (1), (2), or (3), thereby violating  
3 40 C.F.R. § 152(b) and Section 112(c) and (e) of the Act, 42 U.S.C.  
4 § 7412(c) and (e).

5 FIFTH CLAIM FOR RELIEF

6 31. Paragraphs 1 through 21 are incorporated herein by  
7 reference as if fully alleged below.

8 32. In conjunction with the removal of pipe from  
9 the Puyallup River Bridge defendant deposited asbestos-  
10 containing material at one or more sites not operated in accordance  
11 with the provisions of 40 C.F.R. § 61.156. Such action by the  
12 defendant violated 40 C.F.R. § 152(a), and Section 112(c) and  
13 (e) of the Act, 42 U.S.C. § 7412(c) and (e).

14 RELIEF REQUESTED

15 33. Section 113(b) of the Clean Air Act, 42 U.S.C.  
16 § 7413(b) authorizes the Administrator of EPA to commence a  
17 civil action for injunctive relief, or for the assessment of a  
18 civil penalty of not more than \$25,000 per day of violation,  
19 or for both whenever any person violates Section 112(c) or (e),  
20 or Section 114(a)(1)(B) of the Clean Air Act, 42 U.S.C. § 7412(c),  
21 (e), and § 7414(a)(1)(B) by violating a NESHAP.

22 34. Unless restrained by an Order of this Court,  
23 defendant may continue to violate the Clean Air Act, 42 U.S.C.

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1 § 7401, et seq., and the asbestos NESHAP, 40 C.F.R. Part 61,  
2 subpart M.

3 35. Defendant is liable for both equitable relief  
4 and for the assessment of civil penalties under Section 113(b)  
5 of the Clean Air Act, 42 U.S.C. § 7413(b) for the violations  
6 alleged above.

7 WHEREFORE, plaintiff, United States of America,  
8 respectfully prays that this Court:

9 a. Permanently enjoin the defendant from further  
10 violations of the Clean Air Act and the asbestos NESHAP, 40  
11 C.F.R. Part 61;

12 b. Assess civil penalties of \$25,000 for each day of  
13 each violation of EPA's regulations and the Clean Air Act;

14 c. Award plaintiff its costs and disbursements in  
15 this action; and

16 d. Grant such other and further relief as this Court  
17 may deem just and proper.

18 Respectfully submitted,

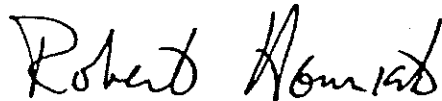
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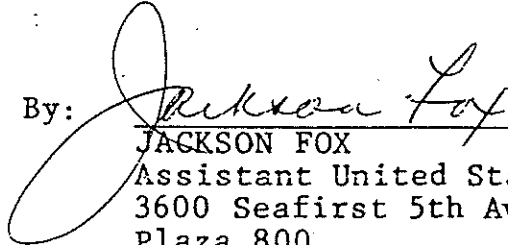
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